

[Submitting Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

MDL No. 3047

Case No. 4:22-03047-YGR

This Document Relates to:

ALL ACTIONS

**OMNIBUS SEALING STIPULATION
PURSUANT TO THE ORDER GRANTING
MOTION TO FILE UNDER SEAL;
SETTING SEALING PROCEDURES
FOR ECF 904**

Pursuant to the Court's Order Granting Motion to File Under Seal; Setting Sealing Procedures ("Sealing Procedures Order") (ECF 341), the Parties, through their undersigned counsel, hereby submit this Omnibus Sealing Stipulation.

The Parties declare in support of this Stipulation:

1. In accordance with Section II of the Sealing Procedures Order, entitled Post-Briefing Omnibus Sealing Procedures, the Parties have met and conferred regarding the Parties' proposed sealing and redactions in the Defendants' Amended Notice of Replacement Personal Injury Bellwether Discovery Pool Selections (ECF 904) filed on May 28, 2024.

2. In accordance with the Sealing Procedures Order, the Parties have created the attached Chart listing the portion of the Defendants' Notice of Replacement Personal Injury

1 Bellwether Discovery Pool Selections (ECF 899) and Defendants' Amended Notice of
 2 Replacement Personal Injury Bellwether Discovery Pool Selections (ECF 904) to be redacted.

3 3. The Parties have limited proposed redactions to Protected Health Information as
 4 defined by the Parties' Stipulated Second Modified Protective Order. (ECF 665).

5 4. In addition, the Parties have limited proposed redactions to materials that are not
 6 currently on the public docket.

7 5. Plaintiffs state the following:

8 a. Protected Health Information ("PHI"): "has the meaning set forth in 45
 9 C.F.R. §§ 160.103 and 164.501...and includes but is not limited to individually identifiable health
 10 information, including demographic information, relating to either (a) the past, present, or future
 11 physical or mental condition of an individual; (b) the provision of health care to an individual..."
 12 Stipulated Second Modified Protective Order. ECF No. 665.

13 b. In *A.C. v. City of Santa Clara*, No. 13-CV-03276-HSG, 2015 WL 4076364,
 14 at *2 (N.D. Cal. July 2, 2015), Judge Gilliam found that when it comes to medical records,
 15 "compelling confidentiality concerns outweigh the presumption of public access to court
 16 records." See *Dalton v. Cnty. of San Diego*, No. 3:21-CV-2143 W (WVG), 2024 WL 1319719, at
 17 *1 (S.D. Cal. Mar. 27, 2024) (to the extent the exhibits identify a minor and implicate her
 18 criminal and mental health history, the documents may be sealed.); *San Ramon Reg'l Med. Ctr.,*
 19 *Inc. v. Principal Life Ins. Co.*, No. 10-cv-02258-SBA, 2011 WL 89931, at *1 n.1 (N.D. Cal. Jan.
 20 10, 2011) (finding that confidentiality of medical records under the Health Insurance Portability
 21 and Accountability Act of 1996 outweighed *Kamakana* presumption in favor of public access to
 22 court records); *Ballou v. McElvain*, No. 3:19-CV-05002-DGE, 2023 WL 8236530, at *2 (W.D.
 23 Wash. Nov. 28, 2023) (concluding that there is great need to protect sensitive medical
 24 information from public disclosure such as plaintiff's mental state, including mental health
 25 symptoms). See also *Liaw v. United Airlines, Inc.*, No. 19-CV-00396-WHA, 2019 WL 6251204,
 26 at *10 (N.D. Cal. Nov. 22, 2019) (private medical records sealed under higher 'compelling
 27 reason' standard); *Pratt v. Gamboa*, No. 17-CV-04375-LHK, 2020 WL 8992141, at *2 (N.D. Cal.
 28 May 22, 2020). ('compelling reasons' justify sealing Plaintiff's medical records which are deemed

confidential under the Health Insurance Portability and Accountability Act of 1996); *Bruce v. Azar*, 389 F. Supp. 3d 716, 727 (N.D. Cal. 2019), *aff'd*, 826 F. App'x 643 (9th Cir. 2020) (courts have found under 'compelling reason' standard that a party's privacy interests in medical records and private information outweigh the public's interest in access.); *Woods v. City of Hayward*, No. 19-CV-01350-JCS, 2021 WL 4061657, at *20 (N.D. Cal. Sept. 7, 2021) (to the extent proposed redactions are based on medical privacy, privacy interests related to juvenile correctional records, or the privacy protections of Rule 5.2, plaintiff has shown 'compelling reasons' to maintain that material under seal and his requests are narrowly tailored). *See also In re Flint Water Cases*, No. 517CV10164JELMKM, 2021 WL 2254064, at *2 (E.D. Mich. May 20, 2021) (private medical information of the bellwether plaintiffs, identifying information of minors, and addresses of minor plaintiffs, all is appropriate to redact and/or seal).

c. PHI, which is already subject to the Stipulated Second Modified Protective Order, should remain sealed in the Defendants' Amended Notice of Replacement Personal Injury Bellwether Discovery Pool Selections, including the statistical analysis and narratives detailing specific "past, present, or future physical or mental conditions" and "the provision of health care" such as hospitalizations. *See* ECF No. 665. The bellwether plaintiffs, all of whom were injured as minors, should be protected from any potential embarrassment resulting from having their PHI linked to their identities as recognized by this Court and well-established Ninth Circuit precedent.

6. Defendants' position is that Plaintiffs' medical histories are not subject to absolute protection, given that Plaintiffs have put those medical histories at issue by filing these lawsuits. *See, e.g., Howard v. Cox*, 2021 WL 4487603, at *2 (D. Nev. Sept. 30, 2021) (sealing medical records but declining to "require the parties to redact the parts of those records that they quote or paraphrase in their briefs because those points are relevant to [plaintiff's] claims in this action"); *Cole v. Janssen Pharms., Inc.*, No. 15-CV-57, 2017 WL 2929523, at *3 (E.D. Wis. July 10, 2017) ("To the extent that the information from the medical records is incorporated into other documents filed by the parties or orders issued by this court, that information is relevant to the issues raised in the case and should be available to the public."). Nonetheless, to obviate the need for the Court to address a sealing dispute, Defendants agree to seal certain material from these

1 briefs without prejudice to their ability to argue that such material should be unsealed in
2 subsequent filings.

3 THEREFORE, in accordance with the Sealing Procedures Order, the Parties stipulate and
4 respectfully request that the Court accept their undisputed requests to maintain the redactions in
5 the Defendants' Amended Notice of Replacement Personal Injury Bellwether Discovery Pool
6 Selections (ECF 899) and Defendants' Amended Notice of Replacement Personal Injury
7 Bellwether Discovery Pool Selections (ECF 904), as set forth in attached Chart and the duly
8 submitted Proposed Order Addressing All Undisputed Sealing Requests emailed to the Court's
9 proposed order inbox.

10 **IT IS SO STIPULATED AND AGREED**

11 DATED: June 7, 2024

Respectfully submitted,

12 By: /s/ Lexi J. Hazam

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PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated _____

Hon. Yvonne Gonzalez Rogers